

FA8JOLIS

Sentence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

15 Cr. 194 VEC

ERNESTO OLIVO, a/k/a Ernesto Perez,
a/k/a Jimenez,

Defendant.

October 8, 2015
2:00 p.m.

Before:

HON. VALERIE E. CAPRONI,

District Judge

APPEARANCES

PREET BHARARA,

United States Attorney for the
Southern District of New York

JESSICA ROSE LONERGAN,

RUSSELL CAPONE,
Assistant United States Attorneys

RICHARD HARRIS ROSENBERG,

DARRYL AUSTIN,

Attorneys for defendant Olivo

Also Present:

DAGOBERTO ORRANTIA,

Certified Spanish Interpreter

FA8JOLIS

Sentence

1 (In open court)

2 (Case called)

3 THE COURT: Good afternoon.

4 THE CLERK: Spanish Interpreter Dagoberto Orrantia is
5 present.

6 THE COURT: Mr. Rosenberg, have you and your client
7 had an opportunity to read the presentence report, dated
8 September 16, 2015?

9 MR. ROSENBERG: Yes, your Honor, with an interpreter
10 we reviewed it.

11 THE COURT: Mr. Olivo, your attorney has just told me
12 you read the presentence report. Is that correct?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: You've discussed it with your attorney?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Mr. Rosenberg, are there any objections to
17 the report?

18 MR. ROSENBERG: No, your Honor, just as I noted in my
19 presentence submission, my sentencing submission, the
20 calculation by the Probation Department on the meth and the
21 cocaine is riding on your decision on the Rule 29, so maybe
22 I'll reserve comments and see how your Honor is ruling on that.
23 That might moot out my arguments.

24 THE COURT: I think everybody agrees on meth, and we
25 can talk about coke.

FA8JOLIS

Sentence

1 MR. ROSENBERG: The meth, I thought they were
2 double-counted.

3 THE COURT: They did double-count. I think everybody
4 agrees they double-counted.

5 MR. ROSENBERG: That is a relief that I was correct on
6 that.

7 THE COURT: So the presentence report will be made
8 part of the record in this matter and placed under seal. If an
9 appeal is taken, counsel on appeal may have access to the
10 sealed report without further application to the court.

11 Okay. On the Rule 29, does anybody want to be heard?

12 MR. CAPONE: No, your Honor. Unless you have
13 questions, the government will defer, rely on its brief.

14 MR. ROSENBERG: Similarly, your Honor.

15 THE COURT: I'll get to those when I go through the
16 sentencing calculation. Let me say I have received a
17 sentencing submission from the government and from the defense.
18 Included in the defense submission were letters from
19 Mr. Olivo's daughter and from many friends both here in the
20 United States as well as in the Dominican Republic.

21 Mr. Rosenberg, Exhibit M was misfiled. It is a letter
22 to Judge Block in connection with a different defendant's case.

23 MR. ROSENBERG: Sorry. I got it mixed up.

24 THE COURT: That is quite all right. I want to make
25 sure it gets to Judge Block.

FA8JOLIS

Sentence

1 MR. ROSENBERG: That is passed already. I must have
2 clicked "Otero" instead of "Olivo."

3 THE COURT: Has the government filed its submission
4 with the clerk?

5 MS. LONERGAN: Your Honor, we filed it on ECF.

6 THE COURT: Mr. Rosenberg, did you file your
7 submission on ECF?

8 MR. ROSENBERG: Sorry?

9 THE COURT: Did you file your submission on ECF?

10 MR. ROSENBERG: I did, yes.

11 THE COURT: Let's talk about the quantity of drugs
12 that Mr. Olivo will be held responsible for.

13 The jury returned a special verdict, indicating that
14 they found that the conspiracy involved more than five
15 kilograms of cocaine. I asked the parties to address whether
16 that finding could be sustained. I read the parties'
17 submission, and I find the jury's special verdict was supported
18 by the evidence, although I disagree with the government on the
19 amount of cocaine that the evidence supports. For the reasons
20 that will be clear, that disagreement does not affect the
21 actual guidelines calculation.

22 I find the evidence supports a finding that the
23 defendant was involved in a conspiracy that involved at least
24 15 kilograms of cocaine. To walk through what my calculation
25 is, the conversation that went into evidence between Garcia and

FA8JOLIS

Sentence

1 the defendant in which Garcia agreed to take two or three
2 kilograms from a larger shipment, viewing that evidence in
3 light most favorable to the government, I attribute that three
4 kilograms to the conspiracy that Mr. Olivo was a part of.

5 It is true that that discussion made it clear the two
6 or three kilograms was part of a larger shipment, but the
7 actual weight of that larger shipment is unknown. The evidence
8 connecting it to the 18 kilograms that were seized in Miami is
9 just too speculative. It rests entirely on Mr. Garcia
10 indicating that the conversation took place during good
11 weather, which may or may not have been about the same time as
12 the seizure in Miami.

13 In terms of the 18 kilograms that were seized in
14 Miami, I do not count that. There was no non-hearsay evidence
15 of how the defendant learned of that number, of the telephone
16 number he was supposed to call. It is not inconceivable to me
17 the informant learned about it and put the defendant up to the
18 call, so I am not going to count the 18 kilograms as cocaine
19 that Mr. Olivo is responsible for.

20 In November 2014, the one kilogram deal that Garcia
21 was involved with in connection with which he was arrested
22 accounts as a kilogram that Mr. Olivo was responsible for.

23 In November 2014, the conversation with El Garte, in
24 that conversation they discussed the fact that the defendant
25 had received 10 kilograms of cocaine that had not been paid for

FA8JOLIS

Sentence

1 but apparently had been sold, so that 10 kilograms Mr. Olivo is
2 responsible for.

3 In September 2014, there was a conversation, these are
4 all on the phones or text messaging, the conversation with the
5 gangster discussed the delivery of one kilogram of cocaine.
6 Mr. Olivo is responsible for that.

7 I do not count the conversation between J.R. Love and
8 the defendant. I think it is too cryptic to figure out what
9 the quantity was. J.R. Love says that the defendant will make
10 three to five minimum, but it isn't clear to me whether that is
11 a quantity or an expected dollar profit, so I did not count
12 that. Nonetheless, adding all of that up, we come up to 15
13 kilograms of cocaine for which the defendant is responsible.

14 Does the government want to be heard on that
15 calculation?

16 MS. LONERGAN: Your Honor, I know that you initially
17 previewed by saying that it was different than the government's
18 calculation, but the guideline range that the government is
19 seeking with respect to cocaine is 15 to 50 kilograms and, in
20 fact, the calculation that the government did with respect to
21 converting it to marijuana --

22 THE COURT: Was based on 15.

23 MS. LONERGAN: -- is based on 15. There may be
24 disagreement with respect to the 18, but I think there is no
25 disagreement with respect to the guidelines.

FA8JOLIS

Sentence

1 THE COURT: I think that's right. I think we disagree
2 on whether he can be held accountable for the 18 kilograms that
3 were seized in Miami.

4 MS. LONERGAN: Understood, your Honor.

5 THE COURT: Mr. Rosenberg, would you like to be heard?

6 MR. ROSENBERG: No, your Honor.

7 THE COURT: As to the guidelines calculation, the PSR
8 reflects a guidelines level of 36, Criminal History Category I,
9 yielding a sentencing range of 188 to 235 months. I find the
10 correct guidelines calculation to be as follows:

11 The base offense level is found in 2D1.1. Because
12 multiple drugs were involved, everything has to be converted to
13 the poundage of marijuana. 15 kilograms of cocaine equals
14 30,000 kilograms of marijuana. 1.5 kilograms of actual
15 methamphetamine equals 30,000 kilograms of marijuana. That is
16 a total of 60,000 kilograms of marijuana. Under No. 2D1.1
17 (c) (2), that yields an offense level of 36.

18 Would the defendant like to be heard on whether there
19 should be an obstruction of justice enhancement?

20 MR. ROSENBERG: Well, your Honor, we note that the PSR
21 did not calculate that, and the government in their submission,
22 while making reference to Mr. Olivo's testimony, did not
23 specifically object to failure of the Probation Department to
24 include that. So I note that at the outset.

25 Secondly, your Honor, I think his testimony was more

FA8JOLIS

Sentence

1 than just saying he was not guilty, and in any case, and I
2 would submit that Mr. Olivo's trial testimony was more of his
3 opinion about or his viewpoint of what his conduct constituted
4 and more of his opinion than fact.

5 THE COURT: Would the government like to be heard?

6 MS. LONERGAN: It is true, your Honor, we are not
7 seeking the obstruction of justice enhancement. Nevertheless,
8 the government's position is that the defendant did, in fact,
9 lie in his testimony. He did not simply assert his innocence.

10 His testimony was much more detailed and in-depth than
11 that and included outright falsehoods, such as the fact that
12 the phones that were in his home were not his phones, they were
13 being used by his cousin, but sometimes by him, but every drug
14 conversation on his phones went to his cousin was using his
15 phones, his cousin sometimes used his wheel wheelchair. These
16 are not true statements.

17 Nevertheless, the government has not sought the
18 obstruction of justice enhancement, although I do think the
19 facts would support it here, but we have not sought it in light
20 of particularly the high guidelines range the defendant is
21 already facing.

22 THE COURT: Okay. Well, I find an obstruction of
23 justice enhancement is appropriate because I think the
24 defendant lied. I think he lied in substantial regards. He
25 may actually not have lied about the one thing he wanted to

FA8JOLIS

Sentence

1 testify about, which was his connection to the Miami deal.
2 That actually had a certain ring of truth to it. It was
3 everything else that was problematic.

4 So a two-level enhancement brings me to an adjusted
5 offense level of 38, with no criminal history, so he is in
6 Criminal History Category I, and that yields a guideline range
7 of 235 to 293 months. Mr. Olivo would say that you should be
8 happy and I am happy the guidelines are no longer binding, but
9 I think that is the correct guidelines calculation.

10 MS. LONERGAN: One thing I think on the record, I
11 don't think it will change the guidelines calculation, but
12 again my math skills, this is why I am a lawyer and not a
13 mathematician, but I think that 15 kilos of cocaine are 3,000
14 kilograms of marijuana and not 30,000.

15 THE COURT: That is entirely possible that I have that
16 off by a zero.

17 MS. LONERGAN: One gram of cocaine is 200 grams of
18 marijuana, which suggests to me that one kilo of cocaine is
19 200,000 grams of marijuana or 200 kilos. I wrote all the
20 zeroes down. Otherwise, I never would have kept track.

21 THE COURT: So 15 kilograms of cocaine is 3,000
22 kilograms?

23 MS. LONERGAN: Of marijuana, which results in 33,000
24 kilograms of marijuana in total, which is still Level 36.

25 THE COURT: Okay. Do you agree with that, Mr.

FA8JOLIS

Sentence

1 Rosenberg?

2 MR. ROSENBERG: Well, I agree that that is a quantity
3 that converts to that.4 THE COURT: That is the way it converts, okay. We
5 still end up with an adjusted offense level of 38, which is a
6 guideline range of 235 to 293 months.

7 MR. ROSENBERG: I still object to the meth quantity.

8 THE COURT: The meth quantity? Go ahead. I thought
9 your objection on the meth quantity was that the PSR
10 double-counted it.11 MR. ROSENBERG: Well, and I also I mentioned he
12 shouldn't be held responsible for more than was actually
13 delivered to him, and I think that was gram quantities for the
14 most part, except Mr. Layton I believe testified to one
15 delivery that constituted a pound, according to his testimony.
16 It was not Mr. Collado's testimony, but Layton's testimony. I
17 added that up, and I thought he should be not responsible for
18 no more than what he was actually, the testimony reflected was
19 actually delivered to him or to his building or that he was
20 attributed to.21 THE COURT: Would the government like to be heard on
22 that?23 MS. LONERGAN: Just briefly. That misstates the law
24 of conspiracy. That would be true if it was a substantive
25 transaction, but here the defendant is in a conspiracy with Mr.

FA8JOLIS

Sentence

1 Layton and and Mr. Collado. It is clear because at one point
2 he asks, Mr. Collado testified the defendant asks Mr. Collado
3 about delivering between three and four pounds of
4 methamphetamine to customers in Pennsylvania.

5 Now, that transaction never took place and the
6 government is not arguing that, but Mr. Collado's response to
7 the defendant was not I don't have that much meth, it is just I
8 am not going to drive to Pennsylvania. The law of conspiracy
9 particularly with respect to sentencing has to do with what is
10 reasonably foreseeable to the defendant.

11 Based on that conversation that he had with Mr.
12 Collado, it is certainly reasonably foreseeable that the
13 quantity of methamphetamine involved was at least 1.5 kilograms
14 of actual meth. Again the government has not asked that
15 Mr. Olivo be held responsible for the entire 20 pounds, but
16 just from the testimony of what was delivered to him plus that
17 conversation, the government believes that 1.5 kilograms of
18 actual methamphetamine is completely a reasonably foreseeable
19 amount to this defendant given his interactions with his
20 co-conspirators.

21 THE COURT: That is also my view is that because of
22 the conversations about the three to four pounds which
23 Mr. Olivo was actively discussing and, therefore, he clearly
24 knew that that amount of meth was available and was part of the
25 conspiracy, you add that to the quantities that were actually

FA8JOLIS

Sentence

1 delivered to him, you get to a quantity that is more than 1.5
2 kilograms.

3 MR. ROSENBERG: I understand that math. I just
4 dispute the imposition of the government and your Honor's
5 finding. I cited the case about buyer-seller relationships,
6 and I think there was no more than that if at all anything.

7 THE COURT: Okay. I disagree, but I would also note
8 that it is not going to affect my sentence. The sentence will
9 be the same if we dropped it down a level and it accordingly
10 dropped down substantially in terms of the guideline range.

11 Are there any other guidelines arguments I have not
12 addressed?

13 MS. LONERGAN: Not from the government, your Honor.

14 MR. ROSENBERG: Nothing from us.

15 THE COURT: I do not see a grounds for departure under
16 the sentencing guidelines. Does the government disagree?

17 MS. LONERGAN: No, your Honor.

18 THE COURT: How about the defense?

19 MR. ROSENBERG: I did mention there is a departure
20 under 5K1.1 (h) (1.4), I believe it is, physical condition of
21 the defendant not being in the heartland, but being unique or
22 unusual, that the condition is "is present to an unusual degree
23 and distinguishes the case from the typical case covered by the
24 guidelines." That is a departure based under 5H1.4. There is
25 also 3553 (a) argument, but that is the variance of that. That

FA8JOLIS

Sentence

1 is the basis. It is in the memo. It is a viable option for
2 your Honor and it is available to the court --

3 THE COURT: Okay.

4 MR. ROSENBERG: -- as a departure.

5 THE COURT: I am not inclined to depart under the
6 guidelines. Are there any other factual issues in dispute we
7 haven't discussed?

8 MS. LONERGAN: I do not believe so, your Honor.

9 THE COURT: Would the government like to be heard on
10 sentence.

11 MS. LONERGAN: Your Honor, the government believes
12 that a substantial term of incarceration such as one within the
13 guidelines is warranted in this case. The evidence made
14 clear -- and that evidence includes the testimony of witnesses
15 as well as the text messages on the defendant's phone -- the
16 defendant was an active broker of narcotics.

17 He was dealing with three individuals who testified in
18 this courtroom, but his phones make clear that he was dealing
19 with numerous individuals. He was also always looking for
20 opportunities to develop new connections in the narcotics world
21 and new lines of supply.

22 Mr. Collado testified at one point the defendant
23 wanted to stay in touch with Mr. Collado because the defendant
24 was aware Mr. Collado had a good contact, a good supplier for
25 cocaine. Even though they were currently dealing in meth, the

FA8JOLIS

Sentence

1 defendant was interested in potential future purchases or
2 transactions in cocaine or heroin.

3 The picture that was painted was of a man who had many
4 tentacles in the narcotics world. Even though the transactions
5 at issue in this case, particularly the ones the witnesses
6 testified about were small, I don't think that is an accurate
7 picture. I think the phones make clear there is one
8 conversation just about in one conversation, a 10-kilogram
9 transaction of cocaine.

10 Mr. Collado also testified the defendant had a long
11 history of drug-dealing. While that is not clearly within the
12 time-frame of the indictment, that is also relevant to the
13 court with respect to fashioning an appropriate sentence.

14 The court has also applied an obstruction point in
15 this case, but I think the fact the defendant was willing to
16 take the stand and lie shows a significant disrespect for the
17 law and that that is also something that should be addressed by
18 the court's sentence. Clearly defendants have the right to
19 testify, but if they lie under oath, that also I think goes
20 into fashioning the appropriate sentence.

21 Finally, I think that there is a general deterrent
22 message that is important with respect to narcotics
23 trafficking. I know the court, I don't need to belabor this,
24 but these are serious drugs. There have been a lot of
25 discussions recently about the mandatory minimums with respect

FA8JOLIS

Sentence

1 to drug laws, and I don't really think this is the kind of
2 individual who was envisioned by either Attorney General Holder
3 or Attorney General Lynch with respect to the low level drug
4 offenders who may potentially be street dealers who are then
5 held accountable for the entire weight of the conspiracy when
6 the guys on the street were making very little money.

7 That is not this defendant. He is a much higher
8 level. He is brokering significant transactions, so I don't
9 think the kind of climate with respect to leniency for
10 first-time offenders -- look, he does not have a record, that
11 is true. I think, though, the testimony is that he was, in
12 fact, and has been a long time drug dealer, and I know no one
13 is asking for (b)(1)(C) treatment here, but just in terms of
14 the atmospherics around the drug convictions, I don't think he
15 is someone who deserves the kind of leniency that Attorney
16 Generals Holder or Lynch are thinking about with respect to
17 first time drug offenders.

18 THE COURT: Thank you. Mr. Rosenberg.

19 MR. ROSENBERG: Your Honor, respectfully, your Honor,
20 it is our position that a sentence of the mandatory minimum of
21 120 months in this case does adequately serve to address the
22 goals of sentencing. Certainly nobody in the public would
23 think a 10 year or 120 month sentence followed by deportation
24 is somehow a slap on the wrist, especially when an individual
25 is 52 years' old, confined to a wheelchair and has no prior

FA8JOLIS

Sentence

1 criminal record.

2 This is a substantial, 10 years is a substantial
3 sentence that the court is required to impose as a
4 mandatory-minimum sentence. I would like to introduce his
5 daughter sitting in the audience, your Honor. That is
6 Ms. Castro, and she has lived and resided with her father, and
7 she is here in spirit and heart and physically to support him.

8 THE COURT: Ms. Castro, thank you for coming. I am
9 sure your father appreciates it, too.

10 MR. ROSENBERG: Your Honor, as we mentioned in our
11 submission, it is hard to reconcile Mr. Olivo being this major
12 drug or broker as he is described when he was alongside a major
13 informant for a number of years and not only was there not any
14 drug exhibits and supposedly with -- if he were the type of
15 broker or individual that was dealing in these quantities of
16 narcotics over the years, it is hard to understand how and why
17 there is no further evidence of that drug activity.

18 THE COURT: I think one possibility -- and I am
19 speculating. There is no evidence in the record one way or the
20 other -- the informant didn't want to give up his friend, and
21 for some reason at the end he did. I have the same curiosity
22 as well.

23 MR. ROSENBERG: It strikes me as so inconsistent with
24 how he is portrayed, and I think just going on the trial record
25 and accepting the trial record as true, as your Honor is

FA8JOLIS

Sentence

1 required to do, even the 10 years is sufficient on this record
2 for a man who has no outward trappings or accouterments of
3 wealth. He lived in modest public housing for more than 20
4 years cutting hair and grooming dogs and subsisting on social
5 security disability, and when his house was searched, there
6 were no drug records, there were no drugs, there was no cache
7 of money or any indicia of narcotics trafficking, again
8 inconsistent with the type of broker that the government is
9 portraying him to be.

10 Your Honor, 10 years is difficult for any human being
11 to serve as a term of imprisonment. I submit that Mr. Olivo's
12 physical condition -- and he is not paralyzed from the neck
13 down. The PSR said that.

14 THE COURT: I was aware of that.

15 MR. ROSENBERG: That was inaccurate. He is paralyzed
16 and he is unable to walk and he is confined to a wheelchair for
17 more than 20 years. Prison is not going to be a picnic for a
18 person in that position and that disability. I think that is a
19 compelling factor for the court to consider in imposing
20 sentence not only as punishment, the appropriate punishment for
21 the crimes that he was convicted of would serve as not only
22 individual deterrent, but general deterrence. Not to repeat
23 myself, it is not an easy sentence and nobody can ever perceive
24 it that way.

25 So I think respect for the law and for the system of

FA8JOLIS

Sentence

justice we have will not be diminished one iota if your Honor imposes, see fits to apply a variance, and I know, too, the Probation Department recommended such a variance, and I joined in in that request, and I think it is one that we don't see very often in this courthouse where Probation recommends a substantial variance. We did see it here, and I respect that and I urge the court to adopt that recommendation.

Thank your Honor.

THE COURT: Thank you, Mr. Rosenberg.

MS. LONERGAN: If I may briefly proffer something not on the record, and so I understand the court will do with it what it will.

With respect to the statements that defense counsel made about the confidential source, we have spoken with the DEA agents who were handling the confidential source, and we asked him some of these same questions, and agree with this or not, but their argument was and what they did was that the confidential source, through the defendant, was meeting a number of different traffickers, and so the agents made a tactical decision, even though the confidential source did inform them at the times Mr. Olivo was either in possession or about to be in possession of drugs, not to intercept those drugs, to maintain the relationship between the confidential source and the defendant so that the defendant could continue to introduce the confidential source to other drug traffickers.

FA8JOLIS

Sentence

1 That was the decision they made. Again I am not trying to
2 Monday morning quarterback because I know the court said it was
3 curious, so I wanted to proffer that. I understand it is not
4 in the trial record.

5 THE COURT: Thank you. The truth is it kind of
6 doesn't matter one way or the other. I am sentencing Mr. Olivo
7 based on the evidence that I saw and not what might have
8 happened or could have happened before. Mr. Olivo, is there
9 anything you would like to say?

10 THE DEFENDANT: No.

11 THE COURT: To the balance of Mr. Olivo's family or
12 friends who just entered, thank you for coming. I am sure he
13 appreciates you coming as well. You would not believe the
14 number of people who stand before this Court for sentencing who
15 have no one there to support them. I am sure he appreciates
16 your coming.

17 Under federal law, I am required to consider the
18 nature and circumstances of the offense and the history and
19 characteristics of the defendant in determining his sentence.
20 Federal law requires me to impose a sentence that is reasonable
21 and no greater than necessary to accomplish the goals of
22 sentencing, which include the need to reflect the seriousness
23 of the offense, to promote respect for the law, to provide just
24 punishment for the offense while avoiding unwarranted
25 disparities between similarly-situated defendants, to deter

FA8JOLIS

Sentence

1 criminal conduct, to protect the public from the defendant, and
2 to provide the defendant with needed education or vocational
3 training, medical care or other correctional treatment.

4 I have considered the nature and circumstances of this
5 offense. This was a distribution network where Mr. Olivo was
6 brokering illegal substances for a substantial period of time.
7 He seemed willing to broker any kind of illegal drug that came
8 along, including methamphetamine, which is a seriously
9 destructive drug to society. This is a serious crime, although
10 I would note that there does not appear to be any violence
11 associated with Mr. Olivo's drug-dealing. That said, there is
12 a substantial amount of violence associated with
13 methamphetamine generally.

14 I have considered the history and characteristics of
15 the defendant. He is 52 years' old and he has no criminal
16 background. That is unusual for a drug dealer at his level of
17 the organization, I would say. On the other hand, at the age
18 of 52 he has never graduated from high school or gotten a GED.
19 Clearly he has substantial limitation on movement following the
20 motorcycle accident that left him partially paralyzed.

21 The sentence in this case needs to serve both as a
22 deterrent to Mr. Olivo, who will get out of jail given what my
23 sentences will be, and needs to serve as a general deterrent to
24 others. The defense argues that a sentence of 10 years, which
25 is the mandatory minimum, I cannot sentence Mr. Olivo below 10

FA8JOLIS

Sentence

1 years is appropriate.

2 Probation agrees, and the U.S. Government argues that
3 the guideline sentence which is calculated by the Probation
4 Office is at least 188 months, which is something over 15 years
5 is appropriate.

6 I have considered two additional factors in
7 determining what the sentence should be. The fact that the
8 defendant is confined to a wheelchair will undoubtedly make
9 incarceration more difficult for him than for an able-bodied
10 inmate. The second thing I have considered is that this
11 conviction is likely to lead to him being deported from the
12 United States where he has lived for many years. Normally that
13 is a factor that weighs extremely heavily in favor of the
14 defendant.

15 In this case, the evidence is that Mr. Olivo has gone
16 back-and-forth to the Dominican Republic, leading me to believe
17 that the possibility that he will be deported is not as
18 devastating for him as it is for many defendants.
19 Nevertheless, the fact is that he is a permanent resident alien
20 of the United States, and I am confident he would prefer to
21 stay here than to be deported back to the Dominican Republic.

22 All in all, in considering all the factors including
23 the fact, as Mr. Rosenberg said, the fact is that 10 years is a
24 long time in jail, I think it will be particularly long for
25 this defendant. So I am going to vary and I am going to vary

FA8JOLIS

Sentence

1 down to the mandatory minimum, impose a sentence on Mr. Olivo
2 of 120 months imprisonment, a five-year term of supervised
3 release.

4 There are mandatory conditions of supervised release.
5 Mr. Olivo, you may not commit another crime. You may not
6 illegally possess a controlled substance. You may not possess
7 a firearm or destructive device. You must be drug-tested
8 within 15 days of release from prison and at least two other
9 times as determined by the Probation Office.

10 The standard conditions of supervision will be
11 imposed, including the following special conditions: You must
12 cooperate with the immigration authorities. I don't know what
13 is going to be going on 10 years from now with immigration, but
14 to the extent they determine to deport you, you must cooperate
15 with the authorities.

16 You must submit your person, residence, place of
17 business, vehicle or any other premises under your control to a
18 search on the basis that the Probation Office has a reasonable
19 belief that contraband or evidence of a violation of the
20 conditions of release may be found there. Any search must be
21 conducted at a reasonable time and in a reasonable manner.
22 Failure to submit to a search may be grounds for revocation of
23 supervised release. Mr. Olivo must inform any other residents
24 of the premise they may be subject to search pursuant to this
25 condition.

FA8JOLIS

Sentence

1 The defendant must report to the nearest Probation
2 Office within 72 hours of release from custody and he will be
3 supervised by the district of residence.

4 I have to impose a special assessment of \$100.00. I
5 am not going to impose a fine because I don't think the
6 defendant is able to pay a fine. I think there was a
7 forfeiture count in the indictment?

8 MS. LONERGAN: Your Honor, the government is not
9 seeking forfeiture.

10 THE COURT: The forfeiture count will be dismissed.

11 Mr. Rosenberg, do you have any request in terms of
12 designation of facilities?

13 MR. ROSENBERG: Your Honor, I think the northeast
14 region would be appropriate. It is near his family and I leave
15 it to the BOP to decide which of the facilities, maybe
16 Otisville or Fort Dix would be suitable for his condition, but
17 I know that there is a medical facility in Devon in Boston,
18 Massachusetts, but that is far away.

19 Perhaps there is something in the Northeast region
20 closer to his domicile, closer to his family in New York that
21 would be suitable for his physical condition. Maybe your
22 Honor's judgment will recommend a facility as close to New York
23 City as possible suitable for Mr. Olivo.

24 THE COURT: I will make that request, Mr. Olivo, and
25 everyone should understand I can only make a request.

FA8JOLIS

Sentence

1 Ultimately the determination of where Mr. Olivo will be
2 incarcerated is up to the Bureau of Prisons, and I don't
3 control them.

4 Mr. Olivo, you have the right to appeal your
5 conviction and your sentence. If you're unable to pay the cost
6 of an appeal, you may apply for leave to appeal in forma
7 pauperis. The notice of appeal must be filed within 14 days of
8 the judgment of conviction. Anything further from the
9 government?

10 MS. LONERGAN: Nothing from the government, your
11 Honor.

12 THE COURT: Anything further, Mr. Rosenberg?

13 MR. ROSENBERG: Nothing, your Honor.

14 THE COURT: Thank you, all.

15 MS. LONERGAN: There is an underlying indictment, so
16 the government is going to move to dismiss the underlying
17 indictment.

18 THE COURT: The underlying indictment is dismissed.

19 (Court adjourned)